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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.NO.65 / 2002

CORAM : Hon'ble Shri S.R.Nayak, Chief Justice
& Hon'ble Shri Dilip Raosaheb Deshmukh, Judge

PETITIONER — W.J.Massey, S/o Late John Ma sey, Aged about 50 years, Ex-Guard Gra :-C, Resident of Tarbahar, Near Ghod ana School, Bilaspur, Chhattisgarh

VERSUS

RESPONDENTS
1. The Central Administrative Trit nal, Bench at Jabalpur Madhya Pra :sh, through its Registrar.
2. Union of India, Through Ge :ral Manager, South Eastern Railway, G den Reach Road, Calcutta, (W.B)
3. Divisional Operations Manager, S uth Eastern Railway, Bilaspur Div ion, Bilaspur (C.G.)
4. Senior Divisional Operations Man ger, South Eastern Railway, Bilaspur Div ion, Bilaspur, (C.G.)

Present: - Shri B.D.Guru, learned counsel for the petitioner.
Dr. N.K.Shukla, Sr. Advocate with Shri Deepak P dey learned Counsel for the respondents No.2, 3 & 4.

ORAL ORDER
(Passed on 30th s January, 2006)

The following order of the Court was passed by S.R.NAYAK, C.J.

1. The departmental enquiry initiated against the petit ner has ultimately resulted in the imposition of compu sory retirement as a disciplinary measure on a p ven

misconduct of the petitioner. The petitioner, b ing aggrieved by the said disciplinary action, instituted Ori nal Application No.173/1996 before the Central Administr ive Tribunal, Jabalpur Bench, Jabalpur (for short he "Tribunal") on various grounds. The Tribunal, how er finding no merit in any of the grounds, by its order d ed 12-10-2001 dismissed the Original Application. Hence, his Writ Petition under Articles 226 & 227 of the Constitu on of India.

2. We have heard learned counsel for the parties. ri B.D.Guru, learned counsel for the petitioner would urge he following three grounds in support of the Writ Petition

(i) that the Divisional Operations Manager, S th Eastern Railway, Bilaspur Division, Bilaspur the t rd respondent herein was not competent to impose he penalty of compulsory retirement on the petiti er and such an order ought to have been imposed ly by the Officer who had appointed the petitione to the post of Assistant Guard by way of promotion;

(ii) that the third respondent before passing the f al order did not issue any notice to the petitioner w th regard to the proposed penalty of compul ry retirement; and

(iii) that the enquiry conducted against the petiti er was vitiated for violation of principles of nat al justice inasmuch as the disciplinary authority did ot furnish the relevant documents to the petiti er despite his request in that regard.

3. Learned Senior Counsel for the Railways, per contra, w uld support the impugned action as well as the order mac by the Tribunal and would contend that no ground was ade out by the petitioner for this Court to step in u der Articles 226 & 227 of the Constitution of Indi to interfere with the impugned orders.

4. Having heard learned counsel for the parties, we dc not find any merit in any of the three contentions urge by Shri B.D.Guru. The first contention was urged before the Tribunal also for its decision-making. It is pointed ou by the Tribunal, which is not disputed before us that the Divisional Operations Manager-the third respondent he ein, is a superior Officer to that of Senior Divisional Pers nel Officer by two grades. In addition, at the relevant poi of time the petitioner delinquent was holding the pay-sca of Rs. 1200-2040 and as per the Railways Servants (Disci ine & Appeal) Rules, 1968 (for short 'the Rules'), the appoi ing authority for persons holding the pay scale of Rs.1)0-2040/- was a Senior Scale Officer. It might be that w ien the Petitioner was promoted to the post of Assis nt Guard by the Senior Divisional Personnel Officer who w s a Junior Administrative Grade Officer, but, by the time he penalty was imposed on the petitioner, he was admitt dly holding the pay scale of Rs.1200-2040 and theref re, major penalty of compulsory retirement could have l en imposed in terms of law only by a Senior Administr ive Grade Officer (other than Director) in terms of the r es.

In that view of the matter the competency and authority of the third respondent to impose the penalty of compulsory retirement on the petitioner as a disciplinary measure could not be questioned.

5. The second contention urged by Shri Guru was totally misconceived and not tenable in law. Here is a case where admittedly the petitioner has had two opportunities to defend himself, namely, before initiation of the departmental enquiry and after the conclusion of enquiry and return of findings of the enquiring authority to the disciplinary authority to have his say in the matter. But, the argument of Shri B.D.Guru is that even after the submission of his reply to the second show cause notice by disciplinary authority on receipt of the findings returned by the enquiring authority, the disciplinary authority ought to have issued one more notice to the petitioner proposing penalty. The right thus, claimed to the third notice is not legally available right of the petitioner. We pointedly asked the learned counsel for the petitioner whether any statutory regulation or administrative instruction issued by the department does provide for issuance of third notice proposing penalty, learned counsel for the petitioner was not in a position to place before us any such statutory rule or the administrative instruction to support his argument that the disciplinary authority ought to have issued notice to the petitioner proposing the penalty of compulsory retirement before it actually passed the order marked as Annexure P-2 dated 29-07-1993.

6. The third contention is required to be noticed only to be rejected. We have carefully perused the judgment of Tribunal. It appears to us that the third contention urged before us, was not urged before the Tribunal at all for decision-making. The question whether the petitioner sought for the copies of relevant documents and whether they were refused by the disciplinary authority/enquiring officer are all matters of fact. In addition, it needs to be noticed that as repeatedly held and reiterated by the Courts that it is not that the Court would be justified in stepping in under Articles 226 & 227 of the Constitution of India upsetting the disciplinary action taken by disciplinary authority against a delinquent-official on the basis of each and every lapse or infraction of procedural rule, but in order to do that the Court should satisfy itself that the violation of principles of natural justice or procedural rules has resulted in substantial injustice to the delinquent.

7. No other points were urged before us to assail the correctness of the impugned order of the Tribunal. The Writ Petition is devoid of merit and is accordingly dismissed. No order as to costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge